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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,412	07/24/2003	Daniel B. Gibbs	7629	1077

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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3635

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/626,412	Applicant(s) GIBBS, DANIEL B.	
	Examiner Chapman E. Jeanette	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-12 and 14-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The final rejection of 8/3/06 is hereby vacated/withdrawn in view of the prior art to Whitney (1793035).

Claims 7-8 are objected to because of the following informalities: Claim 7 depends on cancelled claim 6. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, 8, 10, 14-22 and 25-26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Whitney (1793035).

Whitney discloses a device capable of setting and maintaining the dimensions of a door frame comprising:

1. a first head plate 21
2. a first hollow arm 16 connected to the first head plate
3. a second head plate 21
4. a second hollow arm 15 connected to the second plate
5. the second arm being adjustably engageable with said first arm; see figure 3 and accompanying text

6. the said hollow arm has an inner diameter greater than an outer diameter of the other arm of the first arm and the second arm
7. the first head plate includes a facing edge defining a notch 24, in a side opposite said connection to the first arm 15
8. the second head plate includes a facing edge defining a notch 24 in a side opposite said connection to the second arm 16
9. the first head plate includes a positioning finger 22 extending outward from a side of the facing edge in a direction opposite said connection to the first arm
10. the second head plate includes a positioning finger 22 extending outward from a side of said facing edge in a direction opposite said connection to the second arm
11. adjustment mechanism associated with the first and second arms comprising
 1. at least one retractable engageable member 37 for selectively releasable engagement ; the retractable member 37 comprises a pair of retractable engageable members located in the pair of diametrically opposed apertures 34/36 or pairs of indexing apertures
 2. a plurality of indexing apertures 34 to lock the first arm 16 to a plurality of discrete positions relative to the second arm 15 to establish the distance between the first and second facing edges
 3. the plurality of discrete positions allowing the apparatus to be used to facilitate the installation of the door frames to accommodate doors having one of a plurality of standard widths

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4. diametrically opposed apertures defined transversely through the first and the second arms
 5. the adjustment mechanism disposed within the second end of the first hollow arm; said adjustment mechanism being biased to retractably engage said plurality of pair s of diametrically opposed apertures for locking the first hollow arm in any of a plurality of positions relative to the second hollow arm
 6. said plurality of positions allowing the apparatus to be used with door frames having a plurality of dimensions.
12. element 19 resembles a door stop mounted on the first and second side wall 20
13. the positions are established between the first and second facing edges wherein the plurality of discrete positions allow the apparatus to be used to facilitate the installation of the door frames to accommodate doors having one of a plurality of standard widths
14. an adjustable device whereby the distance between the first facing edge and the second may be varied and to allow the distance between the edges to be set to a desired one of a plurality of discrete distances to facilitate installation of door frames to accommodate doors having one of a plurality of standard widths
- 15., the first and second head plates are arranged and configured so that they may be placed into engagement with the first and second sidewalls, respectively at any position from the bottoms to the tops of the first and second sidewalls. The

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plurality of discrete distances may comprises at least three difference nominal standard widths

16. The first arm 16 is telescopically engaged with the second arm at least a portion of said one of the first arm and the second arm fitting within the other of the first an the second arm. See figures 1 and 6

Most door frames obviously include opposing first and second sidewalls each having a doorstop mounted thereon. This structure is very common in the art of door frames The first and second head plates of Whitney could clearly engage a first/ second side walls of a frame and the first/second edges with the notch located for admitting the first and second doorstop mounted on the first side wall. Note: Most of the recited language is functional or intended use.

Claims 24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Eicher III (534095)

Eicher, III discloses an apparatus for setting and maintaining the dimensions of a door frame comprising:

1. a first head plate 18
2. a first arm 22 connected to the first head plate
3. a second head plate 18
4. a second arm connected to the second plate
5. the second arm being adjustably engageable with said first arm
6. the first head plate includes a facing edge defining a notch, adjacent element 34, in a side opposite said connection to the first arm

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7. the second head plate includes a facing edge defining a notch, adjacent element 34, in a side opposite said connection to the second arm
8. the first head plate includes a positioning finger 30 extending outward from a side of the facing edge in a direction opposite said connection to the first arm
9. the second head plate includes a positioning finger 30 extending outward from a side of said facing edge in a direction opposite said connection to the second arm.

Eicher III discloses a method for setting a door frame comprising the steps of:

- Positioning and anchoring a first sidewall of the door frame to a surface 100/102/104
- Abutting the first and second header plate 18 of the door frame setter against the first side wall of the door frame
- Extending the setter apparatus to a precise, predetermined length and as modified by the secondary references, extending the apparatus in accordance with the measuring indicia
- Anchoring the second sidewall of the door frame to the surface; the second side wall being positioned at a precise separation from the first wall as established by the setter apparatus; see abstract

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5, 9, 11, 12 and 23 (is/are) rejected under 35 U.S.C. 103(a) as being unpatentable over by Whitney (1793035) in view of Schworer (5653415). Schworer discloses a setting apparatus with two arms including a plurality of indexing apertures. Smith discloses a support apparatus with the adjustment mechanism 58, figure 4/6 associated with the first and second arm 32/38 and the adjustment mechanism being retractably engageable with the plurality of indexing apertures 46 for locking said first arm in a plurality of positions relative to the second arm. Specifically Smith discloses an adjustment mechanism associated with the two telescopic arms. The adjustment mechanism comprising at least one retractably engageable member 58 for selectively releasable engagement with a selected one of the plurality of indexing apertures 46/46a to lock the arms in any one of a plurality of discrete positions to thereby establish positions between 50 and 24. The first and second arms includes a pair of diametrically opposed apertures 46/46a defined transversely there through. The adjustment mechanism 58 comprises a pair retractably engaging members located in the pair of apertures. See annotations on patent copy. The retractable engaging members being biased to retractably extend through said pair of apertures and retractably engage the indexing apertures in the arms.

Schworer also teaches arms with measuring indicia, 9 and 64, respectively. The indexing apertures on both references are diametrically opposed pairs. Schworer discloses a first arm which is telescopically engaged with said second arm; the first and second arms comprising first and second hollow arms having first and second ends.

It would have been obvious to one of ordinary skill in the art to modify Whiteny to include the measuring indicia to provide an accurate and specified adjustment as known and as taught by ^{Schwore} ~~N~~ in order to measure and set specific door frame sizes as shown by the two secondary. The exact spacing or the measuring scale employed has been considered a matter of choice. One of ordinary skill in the art would have appreciated any scale which would enable the apparatus to be employed as intended.

Response to Arguments

Applicant's arguments are moot given the new ground of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeanette Chapman
Primary Examiner